

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
Civil Action No. 5:14-cv-00217-BO

VARIETY STORES, INC.,

Plaintiff,

vs.

WAL-MART STORES, INC.,

Defendant.

**DECLARATION OF KAREN DINEEN
IN SUPPORT OF WAL-MART
STORES, INC.'S MOTION FOR
SUMMARY JUDGMENT**

DECLARATION OF KAREN DINEEN

I, Karen Dineen, declare as follows:

1. I am the Senior Director, Brand Management, at Wal-Mart Stores, Inc. (“Walmart”), the defendant in the above-entitled action. I have personal knowledge of the facts set forth herein, which are known by me to be true and correct, and if called as a witness, I could and would competently testify thereto.
2. In late 2010, Walmart began developing a private label trademark, “Backyard Grill” + Design, for grills and grill-related products and accessories, as follows:

**BACKYARD
GRILL**

3. A private label trademark is one that is used on products sold only by a particular retailer. Here, the grills and grill-related products that were sold in connection with “Backyard Grill” + Design have been and are available only at Walmart stores and on Walmart.com.

4. Products sold under the “Backyard Grill” + Design trademark have not been the subject of any major advertising campaign by Walmart. Products sold under the “Backyard Grill” + Design trademark have not been advertised on television, radio or billboards.

5. The only advertising that Walmart has done for products sold under the “Backyard Grill” + Design trademark has been in advertising circulars that have been distributed in newspapers and inside Walmart retail stores. From April 29, 2012 to March 22, 2015, Walmart has advertised “Backyard Grill” + Design products in a total of 22 circulars that were distributed on the following dates:

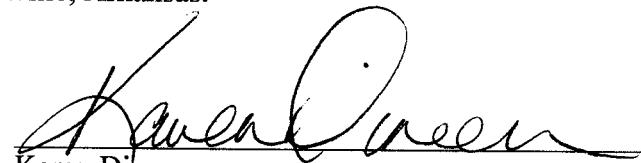
4/29/12
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7/1/14
8/24/14
3/1/15
3/22/15

6. Copies of the following circulars that were circulated in 2012, 2013, 2014 and on March 22, 2015 are attached as Exhibit M to the Declaration of Karen Angell. Exhibit M includes the following:

Year	Bates Stamp	Date
2012	WM 01093	Advertising Circular - April 29, 2012
	WM 1094	Advertising Circular – May 20, 2012
	WM 1095	Advertising Circular – June 10, 2012
	WM 1096	Advertising Circular – August 26, 2012
2013	WM 1097	Advertising Circular – March 3, 2013
	WM 1098	Advertising Circular – March 31, 2013
	WM 1099	Advertising Circular – May 19, 2013
	WM 1100	Advertising Circular – June 2, 2013
	WM 1101 - 1102	Advertising Circular – June 9, 2013
	WM 1103 - 1104	Advertising Circular – June 16, 2013
	WM 1105	Advertising Circular – June 30, 2013
	WM 1106	Advertising Circular – August 25, 2013
	WM 1110	Advertising Circular – June 3, 2013
2014	WM 1112	Advertising Circular – July 1, 2014
	WMS25	Advertising Circular – May 18, 2014
	WMS26	Advertising Circular – June 8, 2014
	WMS38	Advertising Circular – June 29, 2014
	WMS39	Brand shop on Walmart.com, Spring 2014
	WMS40	Advertising Circular – August 24, 2014
	WMS41	Brand shop on Walmart.com, Spring 2014
	WMS 42	Advertising Circular – March 23, 2014
	WMS 43	Advertising Circular – March 30, 2014
	WMS 44	Advertising Circular – April 13, 2014
2015	WMS 466	Advertising Circular – March 22, 2015

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Executed May 8, 2015, at Bentonville, Arkansas.



Karen Diheen